

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
10G0118

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IN THE MATTER OF )  
 )  
Barbara B. DuRant, ) CENSURE  
ATTORNEY AT LAW )  
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On July 22, 2010, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by T. G.

Pursuant to section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Committee found probable cause. Probable cause is defined in the rules as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action."

The rules provide that after a finding of probable cause, the Grievance Committee may determine that the filing of a complaint and a hearing before the Disciplinary Hearing Commission are not required and the Grievance Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue an admonition, a reprimand, or a censure.

A censure is a written form of discipline more serious than a reprimand, issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or a member of the public, but the misconduct does not require suspension of the attorney's license.

The Grievance Committee believes that a hearing before the Disciplinary Hearing Commission is not required in this case and issues this censure to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this censure.

On 13 January 2010, the plaintiff in Granville County file no. 10 CVD 27 filed a complaint and obtained an *ex parte* emergency custody order granting the plaintiff temporary custody of the child. The *ex parte* order was signed by Judge Carolyn Yancey. At that time no other cases governing custody of the child were pending and the defendant, SP, was unrepresented. SP hired you to represent him, and on 21 January 2010, you submitted to Judge Daniel Finch a motion for an *ex parte* order rescinding Judge Yancey's custody order. You made only minimal efforts notify plaintiff's counsel prior to communicating *ex parte* with Judge Finch. Your motion falsely asserted that "the minor child was placed in the custody of [SP] . . . by the Forsyth County Department of Social Services." Although you learned that this statement was false, and DSS had merely initiated an investigation, you did not correct


this material false statement to the tribunal until you were directly confronted by the judge, thereby violating Rule 3.3(a)(1).

Your "motion to rescind" did not cite any rule of procedure or statute authorizing such a motion, nor did it contain an allegation that any of the immediate threats identified in § 50-13.2(d)(3) justified an *ex parte* order changing the child's living arrangements. In fact, your motion focused exclusively on what you deemed to be "dishonesty" by the plaintiff. You even went so far as to say the original *ex parte* order was "fraudulently obtained." You had no reasonable basis in fact for this allegation, nor was there any basis in law for a "motion to rescind." Accordingly, you violated Rule 3.1, which prohibits frivolous claims. Your application for *ex parte* relief was also in violation of Rule 3.5(a)(3), which narrowly limits ethically permissible *ex parte* communication. Finally, your frivolous application for *ex parte* relief created an unnecessary burden on the opposing party, counsel, and the court. As such, it was prejudicial to the administration of justice in violation of Rule 8.4(d).

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Grievance Committee trusts that you will ponder this censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts, to the end that you demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

In accordance with the policy adopted January 24, 2008 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a censure by the Grievance Committee, the costs of this action in the amount of \$100.00 are hereby taxed to you.

Done and ordered, this 26 day of August, 2010.

  
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Ronald G. Baker, Sr., Chair  
Grievance Committee  
The North Carolina State Bar